

4-20-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF ADMINISTRATIVE
HEARINGS

ERNEST E. WHITEHURST,

EEOC Case No. NONE

Petitioner,

AT

FCHR Case No. 21-02977

v.

DOAH Case No. 02-3574

BJS-CLW

DUVAL COUNTY SCHOOL BOARD,

FCHR Order No. 04-038

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Ernest E. Whitehurst filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1999), alleging that Respondent Duval County School Board committed an unlawful employment practice on the basis of Petitioner's disability in circumstances leading to and including Petitioner's termination.

The allegations set forth in the complaint were investigated, and, on August 7, 2002, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Jacksonville, Florida, on February 17 and 18, 2003, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated June 20, 2003.

Pursuant to notice, public deliberations were held on February 13, 2004, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order."

The exceptions to the findings of fact in some instances suggest that specified findings of fact were not supported by competent substantial evidence, and, in others, take issue with the inferences drawn from the evidence presented and the credibility assigned by the Administrative Law Judge to the evidence presented (see exceptions document, specifically exceptions to findings of fact paragraphs 15, 25, 26, 28, and the footnote paragraph relating to mental illness).

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

Petitioner also excepts to conclusions of law paragraphs 48, 50, and 52 through 55.

Some of these exceptions also except to inferences drawn from the evidence presented (see exceptions to paragraph 48, 50 and 52 through 55). In addition, we have concluded, above, that the Administrative Law Judge did apply the applicable law to the facts found.

Based on the foregoing, Petitioner's exceptions are rejected.


Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.


The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 9th day of March, 2004.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:


Commissioner Gayle Cannon,
Panel Chairperson;
Commissioner Keith Roberts; and
Commissioner Mario M. Valle

Filed this 9th day of March, 2004,
in Tallahassee, Florida.


Violet Crawford, Clerk
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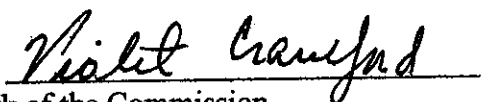
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Barbara J. Staros, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed
addressees this 9th day of March, 2004.

By: 
Clerk of the Commission
Florida Commission on Human Relations